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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SEAN BURKE and JAMES  
POMERENE, Individually and on  
Behalf of All Others Similarly  
Situated,

Plaintiffs,

v.

CLEARVIEW AI, INC., a Delaware  
Corporation; HOAN TON-THAT, an  
Individual; RICHARD SCHWARTZ,  
an Individual; and  
DOES 1 through 10, inclusive,

Defendants.

Case No.: **'20CV0370 BAS MSB**

**CLASS ACTION**

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Sean Burke and James Pomerene (“Plaintiffs”), by their attorneys,  
 2 bring this action individually and on behalf of all others similarly situated against  
 3 Defendants Clearview AI, Inc. (“Clearview”), Hoan Ton-That, Richard Schwartz,  
 4 and DOES 1 through 10, inclusive (collectively, “Defendants”). Plaintiffs make  
 5 the following allegations upon information and belief (except those allegations as  
 6 to the Plaintiffs or their attorneys, which are based on personal knowledge), based  
 7 upon an investigation that is reasonable under the circumstances, which allegations  
 8 are likely to have evidentiary support after a reasonable opportunity for further  
 9 investigation and/or discovery.

### 10 NATURE OF ACTION

11 1. The disturbing conduct at issue in this Complaint was highlighted in  
 12 a letter by Senator Edward J. Markey to Clearview about its use of technology to  
 13 collect, generate, and sell consumers’ biometric information without their consent:

14 “Widespread use of your technology could facilitate dangerous  
 15 behavior and could effectively destroy individuals’ ability to go  
 16 about their daily lives anonymously.”

17 “The ways in which this technology could be weaponized are vast  
 18 and disturbing.”

19 2. As warned by Senator Markey, “[a]ny technology with the ability to  
 20 collect and analyze individuals’ biometric information has alarming potential to  
 21 impinge on the public’s civil liberties and privacy.” Indeed, Defendants’ use of  
 22 Clearview’s technology does just that and violates California and Illinois privacy  
 23 protection statutes, among other laws.

24 3. Without notice or consent, Clearview illicitly “scraped” hundreds, if  
 25 not thousands or more, websites, such as Facebook, Twitter, and Google, for over  
 26  
 27  
 28

1 three billion images of consumers' faces.<sup>1</sup> Clearview's automated scraping of  
 2 images violates the policies of websites like Facebook and Twitter, the latter of  
 3 which specifically prohibits scraping to build facial recognition databases.  
 4 Unlawfully, Defendants stored billions of scraped images of faces in Clearview's  
 5 database, used its facial recognition software to generate biometric information  
 6 (aka a "Faceprint") to match the face to identifiable information, and then sold  
 7 access to the database to third-party entities and agencies for commercial gain.

8 4. In clear violation of multiple privacy laws, Clearview sold for a profit  
 9 access to billions of consumers' Faceprints to law enforcement agencies and  
 10 private companies across the country. Consumers did not receive notice of this  
 11 violation of their privacy rights, and they certainly have not consented to it – in  
 12 writing or otherwise. Clearview and its customers, including law enforcement and  
 13 each of their employees, staff, and any number of other people, may be able to  
 14 access billions of consumers' identities, social connections, and other personal  
 15 details based on the Faceprint created and sold by Clearview. As acknowledged  
 16 by the co-director of the High-Tech Law Institute at Santa Clara University, the  
 17 "weaponization possibilities of this are endless." Imagine a rogue employee of one  
 18 of Clearview's customers who wants to stalk potential romantic partners, a foreign  
 19 government using it to discover information to use to blackmail key individuals,  
 20 or law enforcement agencies prying into the private lives of citizens with no  
 21 probable cause or reasonable suspicion. The "dystopian future" of a mass  
 22 surveillance state has arrived with the erosion of privacy for billions of people, and  
 23 Clearview is at the helm.

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24  
 25 <sup>1</sup> Web "scraping" (aka web harvesting or web data extraction) is data scraping  
 26 used for extracting data from websites. It is a form of copying, in which specific  
 27 data is gathered/fetched and copied/processed from the web, typically into a  
 28 central local database or spreadsheet, for later use.

5. To redress the harms suffered, Plaintiffs, individually and on behalf of The Class and sub-classes (as defined herein below) bring claims for: (1) violation of California’s Unfair Competition Law, Business & Professions Code § 17200, *et seq.* (“UCL”) (predicated on, *inter alia*, violation of the California Consumer Privacy Act of 2018, California Civil Code § 1798.100, *et seq.* (“CCPA”) (on behalf of Plaintiff Burke and the CCPA Class, Commercial Misappropriation Class, and Unjust Enrichment Class against all Defendants); (2) violation of California Civil Code § 3344(a) (“Commercial Misappropriation”) (on behalf of Plaintiff Burke and the Commercial Misappropriation Class against all Defendants); (3) unjust enrichment (aka “restitution” or “quasi-contract”) (on behalf of Plaintiff Burke and the Unjust Enrichment Class against Clearview); and (4) violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) (on behalf of Plaintiff Pomerene and the BIPA Class against all Defendants).<sup>2</sup>

### JURISDICTION

6. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) as well as the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) (“CAFA”), as to the named Plaintiffs and every member of The Class, because the proposed Class contains more than 100 members, the aggregate amount in controversy exceeds \$5 million, and Class members reside in California and are therefore diverse from Defendants. The Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367(a).

7. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court’s jurisdiction for purpose of this Complaint. This Court has personal jurisdiction over Clearview because it does a substantial amount of business in California, including in this District; is authorized to conduct business

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<sup>2</sup> The Sub-Classes are defined below in Paragraphs 51-52 of the Complaint.

1 in California, including in this District; and/or has intentionally availed itself of  
 2 the laws and markets of this District through the use, promotion, sale, marketing,  
 3 and/or distribution of its products and services at issue in this Complaint.

4 8. This Court has personal jurisdiction over Defendants Hoan Ton-That  
 5 and Richard Schwartz because, as set forth in more detail below, they conspired  
 6 with Clearview to further the illegal scheme alleged in this Complaint, which  
 7 directly targeted and impacted thousands, if not millions, of California residents  
 8 and citizens, including in this District. Defendants Ton-That and Schwartz  
 9 consented to, authorized, and directed the business conduct at issue in California,  
 10 including in this District and have availed themselves of the laws and markets of  
 11 this District.

12 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b),  
 13 because a substantial part of the events or omissions giving rise to the claims  
 14 occurred in this District. Venue is also proper under 18 U.S.C. § 1965(a), because  
 15 Clearview transacts a substantial amount of its business in this District.  
 16 Alternatively, venue is proper under 28 U.S.C. § 1391(b)(3) because this Court has  
 17 personal jurisdiction over Defendants.

## 18 THE PARTIES

### 19 Plaintiff Sean Burke

20 10. Plaintiff Sean Burke is a natural person and over the age of eighteen.  
 21 Plaintiff Burke is, and at all relevant times has been, a resident and citizen of San  
 22 Diego, California.

23 11. Throughout the relevant period of this Complaint, numerous  
 24 photographs that include images of Plaintiff Burke's face were uploaded to various  
 25 internet-based platforms and websites, including on Facebook, Twitter, Instagram,  
 26 Google, Venmo, and/or YouTube.

27 12. Based on information and belief, Clearview "scraped" images of  
 28 Plaintiff Burke's face from internet-based websites, in violation of several of the

1 websites' terms of use and stored them in its database. Clearview's software  
2 application then applied facial recognition software to the images of Plaintiff  
3 Burke's face, calculated his unique physical characteristics, and generated a  
4 biometric template therefrom. Clearview generated biometric information (a  
5 "Faceprint") enabling the identification of Plaintiff Burke, in direct violation of  
6 the laws identified in this Complaint, including the BIPA and CCPA. Clearview  
7 then sold access to its database containing Plaintiff Burke's photograph and  
8 Faceprint to third-party entities for commercial monetary gain in an amount to be  
9 determined at trial.

10 13. Plaintiff Burke never consented, agreed, or gave permission – written  
11 or otherwise – to Clearview to collect, capture, purchase, receive through trade,  
12 obtain, sell, lease, trade, disclose, redisclose, disseminate, or otherwise profit from  
13 or use his photograph and biometric information and identifiers. Likewise,  
14 Clearview never informed Plaintiff Burke by written notice or otherwise that  
15 Plaintiff Burke could prevent Clearview from collecting, capturing, purchasing,  
16 receiving through trade, obtaining, selling, leasing, trading, disclosing,  
17 redisclosing, disseminating, or otherwise profiting from or using his photograph  
18 and biometric information and identifiers. Similarly, Plaintiff Burke was never  
19 provided with an opportunity to prohibit or prevent Clearview from collecting,  
20 capturing, purchasing, receiving through trade, obtaining, selling, leasing, trading,  
21 disclosing, redisclosing, disseminating, or otherwise profiting from or using his  
22 photograph and biometric information and identifiers.

23 14. As a result of Clearview's unauthorized collecting, capturing,  
24 purchasing, receiving through trade, obtaining, selling, leasing, trading, disclosing,  
25 redisclosing, disseminating, or otherwise profiting from or using Plaintiff Burke's  
26 photograph and biometric information and identifiers, Plaintiff Burke was  
27 deprived of his control over that valuable and sensitive information. By depriving  
28 him of his control over this valuable information, Clearview misappropriated the

1 value of his photograph and biometric information and identifiers. Clearview has  
 2 unlawfully profited therefrom. Plaintiff Burke has further suffered damages in the  
 3 diminution in value of his sensitive biometric information and identifiers –  
 4 information which is now at higher risk of privacy violations.

5 **Plaintiff James Pomerene**

6 15. Plaintiff James (aka “Jim”) Pomerene is a natural person and over the  
 7 age of eighteen. Plaintiff Pomerene is, and at all relevant times has been, a resident  
 8 and citizen of Rockford, Illinois.

9 16. Throughout the relevant period of this Complaint, photographs that  
 10 include images of Plaintiff Pomerene’s face were uploaded to various internet-  
 11 based platforms and websites, including Facebook, Twitter, Instagram, Google,  
 12 Venmo, and/or YouTube.

13 17. Based on information and belief, Clearview “scraped” images of  
 14 Plaintiff Pomerene’s face from internet-based websites, in violation of several of  
 15 the websites’ terms of use and stored them in its database. Clearview’s software  
 16 application then applied facial recognition software to the images of Plaintiff  
 17 Pomerene’s face, calculated his unique physical characteristics, and generated a  
 18 biometric template therefrom. Clearview generated biometric information (a  
 19 “Faceprint”) enabling the identification of Plaintiff Pomerene, in direct violation  
 20 of the laws identified in this Complaint, including the BIPA and CCPA. Clearview  
 21 then sold access to its database containing Plaintiff Pomerene’s photograph and  
 22 Faceprint to third-party entities for a commercial monetary gain in an amount to  
 23 be determined at trial.

24 18. Plaintiff Pomerene never consented, agreed, or gave permission –  
 25 written or otherwise – to Clearview to collect, capture, purchase, receive through  
 26 trade, obtain, sell, lease, trade, disclose, redisclose, disseminate, or otherwise profit  
 27 from or use his photograph and biometric information and identifiers. Likewise,  
 28 Clearview never informed Plaintiff Pomerene by written notice or otherwise that



1 Plaintiff Pomerene could prevent Clearview from collecting, capturing,  
2 purchasing, receiving through trade, obtaining, selling, leasing, trading, disclosing,  
3 redisclosing, disseminating, or otherwise profiting from or using his photograph  
4 and biometric information and identifiers. Similarly, Plaintiff Pomerene was never  
5 provided with an opportunity to prohibit or prevent Clearview from collecting,  
6 capturing, purchasing, receiving through trade, obtaining, selling, leasing, trading,  
7 disclosing, redisclosing, disseminating, or otherwise profiting from or using his  
8 photograph and biometric information and identifiers.

9 19. As a result of Clearview's unauthorized collecting, capturing,  
10 purchasing, receiving through trade, obtaining, selling, leasing, trading, disclosing,  
11 redisclosing, disseminating, or otherwise profiting from or using Plaintiff  
12 Pomerene's photograph and biometric information and identifiers, Plaintiff  
13 Pomerene was deprived of his control over that valuable and sensitive information.  
14 By depriving him of his control over this valuable information, Clearview  
15 misappropriated the value of his photograph and biometric information and  
16 identifiers. Clearview has unlawfully profited therefrom. Plaintiff Pomerene has  
17 further suffered damages in the diminution in value of his sensitive biometric  
18 information and identifiers – information which is now at higher risk of privacy  
19 violations.

20 **Defendant Clearview AI, Inc.**

21 20. Defendant Clearview AI, Inc., is a private, for-profit Delaware  
22 Corporation, with its principal place of business located in New York, New  
23 York. Clearview markets its product throughout the United States, including in  
24 California and Illinois. Based on information and belief, a large majority of the  
25 websites and platforms from which Clearview illicitly scraped the images of faces  
26 of billions of consumers are owned and operated by California-based companies,  
27 such as Facebook.



21. Defendant Clearview is a “private entity” within the meaning of the BIPA, which defines “private entity” as “any individual, partnership, corporation, [etc.] ... however organized.” 740 ULCS 14/10. Based on information and belief, Clearview is also a “business” within the meaning of the CCPA because: (i) it is a corporation; (ii) it operates for a profit or financial benefit of its shareholders or other owners; (iii) it does business in the State of California; (iv) it collects “consumers’ personal information” and determines the purposes and means of the processing of consumers’ personal information; and (v) it derives 50 percent or more of its annual revenues from selling consumers’ personal information and/or its sells and/or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers. Defendant Clearview is also a “person” within the meaning of California’s commercial misappropriation statute, Cal. Civ. Code § 3344. As set forth below, Plaintiffs, individually and on behalf of the Class, bring Counts I-IV against Clearview.

### **Defendant Hoan Ton-That**

22. Defendant Hoan Ton-That is a founder and Chief Executive Officer of Clearview. Defendant Ton-That is a “private entity” within the meaning of the BIPA, which defines “private entity” as “any individual, partnership, corporation, [etc.] ... however organized.” 740 ULCS 14/10. Defendant Ton-That is also a “person” within the meaning of California’s commercial misappropriation statute, Cal. Civ. Code § 3344.

23. As a founder and owner of Clearview, Defendant Ton-That knew of, participated in, consented to, approved, authorized, and directed the wrongful acts alleged in this Complaint. Based on information and belief, Defendant Ton-That conspired with Clearview and its other owners/shareholders, officers, and/or directors, including, without limitation, Defendant Richard Schwartz, to carry out the illegal scheme alleged in this Complaint. As set forth below, Plaintiffs bring Counts I, II and IV against Defendant Ton-That.

**Defendant Richard Schwartz**

24. Defendant Richard Schwartz is a founder and, based on information and belief, an officer, director and/or principal of Clearview. Defendant Schwartz is a “private entity” within the meaning of the BIPA, which defines “private entity” as “any individual, partnership, corporation, [etc.] ... however organized.” 740 ULCS 14/10. Defendant Schwartz is also a “person” within the meaning of California’s commercial misappropriation statute, Cal. Civ. Code § 3344.

25. As a founder and officer, director, and/or principal of Clearview, Defendant Schwartz knew of, participated in, consented to, approved, authorized, and directed the wrongful acts alleged in this Complaint. Based on information and belief, Defendant Schwartz conspired with Clearview and its other owners/shareholders, officers, and/or directors, including, without limitation, Defendant Hoan Ton-That, to carry out the illegal scheme alleged in this Complaint. As set forth below, Plaintiffs bring Counts I, II and IV against Defendant Schwartz.

**Defendants Conspired Amongst Themselves and With Others to Carry Out  
the Unlawful Scheme**

26. Defendants conspired amongst themselves and, based on information and belief, with the other owners, directors, officers, and/or shareholders of Clearview (the “Co-Conspirators”), to carry out the unlawful scheme, including the intentional torts. Defendants and the Co-Conspirators knew and/or had reason to know about Clearview’s primary business function, which was to scrape the internet for images of faces, use facial recognition technology to generate biometric information and identifiers, and sell access of the same to third-party entities and agencies, without the consent of the consumers whose photographs and biometric information and identifiers were being used. Defendants and the Co-Conspirators agreed to this business plan – a plan, which when carried out, violated several laws, including, *inter alia*, the BIPA and California’s commercial

1 misappropriation statute. Defendants and the Co-Conspirators intended to profit  
2 from the primary, albeit unlawful, business plan of Clearview.

3 27. Defendants each had knowledge of the unlawful business purpose,  
4 consented to and authorized the fulfillment of the unlawful business purpose, and  
5 directed and otherwise carried out the unlawful business purpose of the  
6 unauthorized collecting, capturing, purchasing, receiving through trade, obtaining,  
7 selling, leasing, trading, disclosing, redisclosing, disseminating, or otherwise  
8 profiting from and/or using Plaintiffs' and the Class's photographs and biometric  
9 information and identifiers without their consent.

10 28. Each of the Co-Conspirators are responsible as joint tortfeasors for  
11 all damages ensuing from the wrongful conduct carried out by Defendants. Each  
12 member of the conspiracy is liable for all acts done by others pursuant to the  
13 conspiracy, and for all damages caused thereby.

14 29. The true names and capacities of defendants sued herein as Does 1  
15 through 10, inclusive, are presently not known to Plaintiffs, who therefore sues  
16 these defendants by such fictitious names. Plaintiffs will seek to amend this  
17 complaint and include these Doe Defendants true names and capacities when they  
18 are ascertained. Each of the fictitiously named defendants is responsible in some  
19 manner for the conduct alleged herein and for the injuries suffered by Plaintiffs  
20 and The Class.

## 21 **FACTUAL ALLEGATIONS**

### 22 **Biometrics and Privacy**

23 30. "Biometrics" refers to technologies used to identify an individual  
24 based on unique physical characteristics, *e.g.*, "face geometry." Throughout the  
25 last several years, companies have developed facial recognition technology, which  
26 works by scanning an image for human faces, extracting facial feature data from  
27 the image, generating a "faceprint" through the use of facial-recognition  
28

1 algorithms, and then comparing the resultant faceprint to other faceprints stored in  
2 a database. If a match is found, a person may be identified, including sensitive and  
3 confidential information about that person.

4 31. This technology has raised serious privacy concerns about its massive  
5 scope and surreptitiousness. For example, in 2011, Google's Chairman at the time  
6 said it was a technology the company held back on because it could be used "in a  
7 very bad way." U.S. Senator Markey recognized that widespread use of the  
8 technology "could facilitate dangerous behavior and could effectively destroy  
9 individuals' ability to go about their daily lives anonymously."

10 32. The Illinois Legislature has acknowledged that the "full ramifications  
11 of biometric technology are not fully known." 740 ILCS 14/5(f). It is known,  
12 however, that the "public welfare, security, and safety will be served by regulating  
13 the collection, use, safeguarding, handling, storage, retention, and destruction of  
14 biometric identifiers and information." 740 ILCS 14/5(g).

15 33. Biometrics are unlike other unique identifiers that are used to access  
16 finances or other sensitive information." 740 ILCS 14/5(c). For example, "social  
17 security numbers, when compromised, can be changed." *Id.* "Biometrics,  
18 however, are unique to the individual; therefore, once compromised, the individual  
19 has no recourse ... [and] is at heightened risk for identity theft ...." *Id.*  
20 Recognizing this problem, the Federal Trade Commission urged companies using  
21 facial recognition technology to ask for consent *before* scanning and extracting  
22 biometric data from photographs.<sup>3</sup> This prevailing view has been adopted by both  
23 the BIPA and the CCPA, which require notice to and consent from the person  
24 who's biometric identifier or information is being used. Unfortunately, Clearview  
25

26 <sup>3</sup> See *Facing Facts: Best Practices for Common Uses of Facial Recognition*  
27 *Technologies*, Federal Trade Commission (Oct.2012), available at  
28 <http://www.ftc.gov/sites/default/files/documents/reports/facing-facts-best-practices-common-uses-facial-recognitiontechnologies/121022facialtechrpt.pdf>.

could care less about the prevailing view or these laws and failed to obtain user consent before launching its wide-spread facial recognition program and continues to violate millions of California and Illinois residents' legal privacy rights.

#### **California's Consumer Privacy Act of 2018 ("CCPA") (via UCL)**

34. Under the CCPA, a "business that collects a consumer's personal information shall, *at or before* the point of collection, inform consumers as to the categories of personal information to be collected and the purposes for which the categories of personal information shall be used." Cal. Civ. Code § 1798.100(b). "A business shall not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section." *Id.*

35. The statute defines "personal information" as any "information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonable be linked, directly or indirectly, with a particular consumer or household." Cal. Civ. Code § 1798.140(o)(1). Personal information includes, but is not limited to, "[b]iometric information." Cal. Civ. Code § 1798.140(o)(1)(E). "Biometric information" means an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity." Cal. Civ. Code 1798.140(b). "Biometric information includes, but is not limited to, imagery of the iris, retina, fingerprint, *face*, hand, [etc.] ... from which an identifier template, such as a faceprint ... can be extracted ...." *Id.* (emphasis added).

#### **Illinois's Biometric Information Privacy Act ("BIPA")**

36. The BIPA was enacted in 2008. Under the BIPA, companies may not "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier . . . unless it first:

1 (1) informs the subject . . . in writing that a biometric identifier . . . is being  
2 collected or stored;

3 (2) informs the subject . . . in writing of the specific purpose and length of  
4 term for which a biometric identifier . . . is being collected, stored, and used;  
5 and

6 (3) receives a written release executed by the subject of the biometric  
7 identifier . . . .”

7 740ILCS 14/15(b).

8  
9 37. The statute defines “biometric identifier” to include “retina or iris  
10 scan, fingerprint, voiceprint, or scan of hand or *face geometry*.” 740 ILCS 14/10.  
11 “Biometric Information’ means any information, regardless of how it is captured,  
12 converted, stored, or shared, based on an individual’s biometric identifier used to  
13 identify an individual.” *Id*

14 38. The BIPA also regulates how companies must handle Illinois  
15 residents’ biometric identifiers and information. 740 ILCS 14/15(c)-(d). For  
16 example, the law prohibits selling, leasing, trading, or otherwise profiting from a  
17 person’s biometric data. 704 ILCS 14/15(c). The BIPA also requires companies  
18 like Clearview to develop a publicly available written policy establishing a  
19 retention schedule and guidelines for permanently destroying biometric data. 740  
20 ILCS 14/15(a).

### 21 **Clearview Knowingly and Intentionally Violated the BIPA and CCPA**

22 39. As explained below, Defendants unlawfully collected, captured,  
23 purchased, received through trade, obtained, sold, leased, traded, disclosed,  
24 redisclosed, disseminated, and/or otherwise profited from or used Plaintiffs’ and  
25 The Class’s photographs and biometric information and identifiers in violation of  
26 the CCPA, BIPA, and California’s law against Commercial Misappropriation.

1 Clearview has been described by the media as the “secretive company that might  
2 end privacy as we know it.”<sup>4</sup>

3 40. Clearview uses a software application to illicitly and secretly scrape  
4 billions of images from websites such as Twitter, Facebook, Venmo, Google,  
5 Instagram and YouTube, in violation of many of the websites’ policies. Indeed,  
6 companies such as Facebook and Twitter have sent Clearview cease and desist  
7 letters.

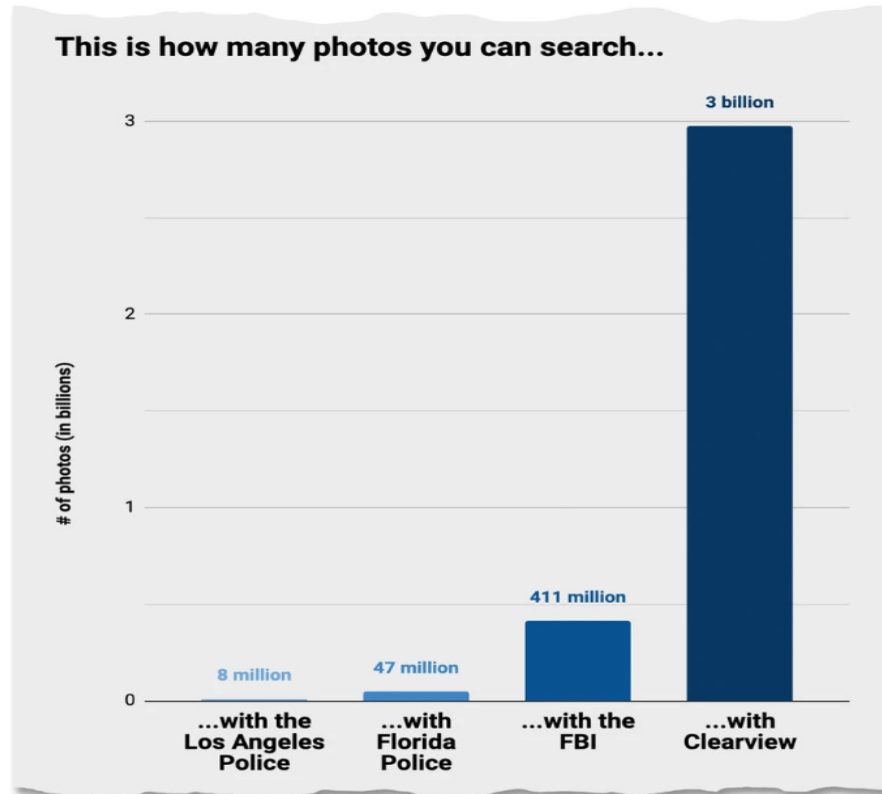
8 41. Clearview’s software application then applies facial recognition  
9 software to the illicitly scraped images, whereby the company uses artificial  
10 intelligence algorithms to scan the facial geometry of faces in the images. The  
11 algorithm calculates an individual face’s unique physical characteristics, which  
12 result in a biometric template that is separate and distinct from the image from  
13 which it was created. Clearview describes the technology as a “state-of-the-art  
14 neural net” to convert all images into mathematical formulas, or “vectors,” based  
15 on facial geometry – like how far apart a person’s eyes are. This process generates  
16 biometric information enabling the identification of the individuals in the images  
17 (herein referred to as individuals’ “Faceprint”), in direct violation of the BIPA and  
18 CCPA. Defendants engage in this process without notifying any of the individuals  
19 whose images Clearview has captured, converted into a Faceprint, stored, and  
20 shared for a profit. Defendants certainly have not obtained these individuals’  
21 consent – written or otherwise.

22 42. Once Defendants generate the biometric information for millions of  
23 people, Clearview sells access to the database to law enforcement agencies and  
24 private companies. Instead of having limited photo arrays, agencies and private  
25 companies are now able to use Clearview’s database of three billion photos:

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27 <sup>4</sup> See, e.g., Kshmir Hill, “*The Secretive Company That Might End Privacy as*  
28 *We Know It*”. New York Times. Jan. 18, 2020. ISSN 0362-4331. Retrieved 2020-  
02-18.





A chart from marketing materials that Clearview provided to law enforcement.  
Clearview

43. Based on information and belief, very few individuals have been arrested, much less convicted, using Clearview's database. Yet, these agencies and private companies have instantaneous access to the biometric information of billions of people allowing them to peep into almost every aspect of their digital lives, including who they associate with and where they live.

44. It has also been reported that Defendants have real-time access to monitor which individuals the law enforcement agencies are searching for. For example, an investigative journalist from the New York Times who was doing a story on Clearview had a law enforcement agency upload images of his face and run it through Clearview's application. Soon thereafter, the agency received calls from Clearview asking if it was talking to the media – a clear sign Clearview has the ability and appetite to monitor whom law enforcement is searching for.

45. In addition, based on information and belief, the computer code underlying Clearview's software application includes programmable language to

1 enable it to pair with augmented reality glasses. This tool potentially enables any  
 2 user wearing the glasses to identify in real-time every person they see as they walk  
 3 down the street, potentially revealing not just their names, but where they live,  
 4 what they like to do, and who they know and associate with.

5 46. Moreover, it has been shown that Clearview cannot adequately  
 6 safeguard the biometric information and identifiers of Plaintiffs and the Class. On  
 7 February 26, 2020, it was publicly reported that there was a data breach of  
 8 Clearview's client list and other information.

9 47. The result of Clearview's technology is not a safer society by  
 10 enabling law enforcement access to a broader database from which can lead to the  
 11 capture of criminals. The result is a profit machine for a single company that relies  
 12 on the secret use of individual's biometric information. This is a radical evasion  
 13 and erosion of privacy. Defendants are laying the groundwork for a dystopian  
 14 future and violating, *inter alia*, the BIPA and CCPA in the process.

### 15 **CLASS ACTION ALLEGATIONS**

16 48. Plaintiffs reallege and incorporate herein by reference each allegation  
 17 in the preceding and subsequent paragraphs.

18 49. Plaintiffs bring this action individually and on behalf of a class of  
 19 similarly situated individuals pursuant to Rule 23 of the Federal Rules of Civil  
 20 Procedure.

21 50. As used herein, the following terms have the meanings set forth  
 22 below:

23 (a) "California Biometric Information" means an "individual's  
 24 physiological, biological, or behavioral characteristics, including an individual's  
 25 deoxyribonucleic acid (DNA), that can be used, singly or in combination with each  
 26 other or with other identifying data, to establish individual identity" as defined  
 27 under CCPA, Cal. Civ. Code § 1798.140(b).  
 28

(b) “Illinois Biometric Information” means “any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual” as defined in the BIPA, 740 ILCS 14/10.

(c) “Photograph” means “any photographic or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is identifiable” as defined by Cal. Civ. Code § 3344(b).

51. Plaintiff Burke seeks to represent the following classes of persons:

(a) **Sub-Class One (the “CCPA Class”) (Cal. Civ. Code § 1798.100, et seq):**

All persons who, while residing in California, had their California Biometric Information collected and/or used by Clearview without prior notice by Clearview and without their consent.

(b) **Sub-Class Two (the “Commercial Misappropriation Class”) (Cal. Civ. Code § 3344):**

All persons who, while residing in California, had their Photograph or likeness knowingly used by Clearview for commercial gain without their consent.

(c) **Sub-Class Three (the “Unjust Enrichment Class”):**

All persons who, while residing in California, had their California Biometric Information misappropriated by Clearview from which Clearview was unjustly enriched.

52. Plaintiff Pomerene seeks to represent the following class of persons:

(a) **Sub-Class Four (the “BIPA Class”) (740 ILCS 14/1, et seq.):**

All persons who, while residing in Illinois, had their Illinois Biometric Information collected, captured, purchased, received, obtained, sold, leased, traded, disclosed, redisclosed, disseminated,

1 and/or otherwise profited from and/or used by Clearview without  
2 their consent.

3 53. Collectively, the four sub-classes are herein referred to as “The  
4 Class.”

5 54. Excluded from The Class are Clearview, their officers and directors,  
6 families, owners, and legal representatives, heirs, successors, or assigns, and any  
7 entity in which Clearview have a controlling interest, and any Judge assigned to  
8 this case and their immediate families.

9 55. Plaintiffs reserve the right to amend or modify the class definition in  
10 connection with their motion for class certification, as a result of discovery, at trial,  
11 or as otherwise allowed by law.

12 56. Plaintiffs bring this action individually and on behalf of all others  
13 similarly situated because there is a well-defined community of interest in the  
14 litigation and the proposed sub-classes are easily ascertainable.

### 15 **Numerosity**

16 57. The potential members of The Class, and each of the four sub-classes  
17 independently, are so numerous joinder of all the members is impracticable. While  
18 the precise number of members of The Class, or each of the four sub-classes, has  
19 not been determined, Plaintiffs are informed and believe The Class, and each of  
20 the four-sub classes, include at least thousands (and potentially even millions) of  
21 individuals.

22 58. Based on information and belief, Clearview’s records evidence the  
23 number and location of The Class, and each of the four sub-classes, respectively.

### 24 **Commonality and Predominance**

25 59. There are questions of law and fact common to The Class that  
26 predominate over any questions affecting only individual class members. These  
27 common questions of law and fact include, without limitation:  
28

1 (a) Whether Clearview collected, captured, received, or otherwise  
 2 obtained Plaintiff Pomerene's and the BIPA Class's Illinois Biometric  
 3 Information;

4 (b) Whether Clearview has sold, leased, traded, or otherwise  
 5 profited from Plaintiff Pomerene's and the BIPA Class's Illinois Biometric  
 6 Information;

7 (c) Whether Clearview disclosed, redisclosed, or otherwise  
 8 disseminated Plaintiff Pomerene's and the BIPA Class's Illinois Biometric  
 9 Information;

10 (d) Whether Clearview properly informed Plaintiff Pomerene's  
 11 and the BIPA Class that it collected, captured, purchased, received, obtained, sold,  
 12 leased, traded, disclosed, redisclosed, disseminated, and/or otherwise profited  
 13 from and/or used their Illinois Biometric Information;

14 (e) Whether Clearview obtained a written release (as defined in  
 15 740 ILCS 14/10) from Plaintiff Pomerene and the BIPA Class to collect, capture,  
 16 or otherwise obtain their biometric identifiers;

17 (f) Whether Clearview made publicly available to Plaintiff  
 18 Pomerene and the BIPA Class, a written policy establishing a retention schedule  
 19 and guidelines for permanently destroying Illinois Biometric Information in  
 20 compliance with the BIPA;

21 (g) Whether Clearview's violations of the BIPA were committed  
 22 intentionally, recklessly, or negligently;

23 (h) Whether Clearview collected and/or used Plaintiff Burke's and  
 24 the CCPA Class's California Biometric Information without first providing notice  
 25 of such collection and/or use;

26 (i) Whether Clearview knowingly used the Photograph and/or  
 27 likeness of Plaintiff Burke and the Commercial Misappropriation Class for  
 28 commercial gain without their consent;

(j) Whether Clearview was unjustly enriched by the misappropriation of Plaintiff Burke's and the Unjust Enrichment Class's California Biometric Information;

(k) Whether Defendants conspired for the purpose of accomplishing some concerted action either for an unlawful purpose or lawful purpose by unlawful means; and

(l) Whether Plaintiffs and The Class have been harmed and the proper measure of relief.

### **Typicality**

60. The claims of Plaintiffs are typical of the claims of The Class. Plaintiffs and all members of The Class sustained injuries and damages arising out of and caused by Clearview's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

### **Adequacy of Representation**

61. Plaintiffs will fairly and adequately represent and protect the interests of The Class. Counsel who represents Plaintiffs are competent and experienced in litigating large consumer class actions.

### **Superiority of Class Action**

62. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of The Class is not practicable, and questions of law and fact common to The Class predominate over any questions affecting only individual members of The Class. Each member of The Class has been damaged and is entitled to recovery because of Clearview's uniform unlawful policy and/or practices described herein. There are no individualized factual or legal issues for the court to resolve that would prevent this case from proceeding as a class action. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient

1 and economical for the parties and the judicial system. Plaintiffs are unaware of  
 2 any difficulties that are likely to be encountered in the management of this action  
 3 that would preclude its maintenance as a class action.

#### 4 **COUNT I**

##### 5 **Unlawful and Unfair Business Practices**

##### 6 **In Violation of Bus. & Prof. Code §§ 17200, *et seq.***

##### 7 **(On Behalf of Plaintiff Burke and The CCPA Class, the Commercial 8 Misappropriation Class, and the Unjust Enrichment Class against All 9 Defendants)**

10 63. Plaintiffs hereby reallege and incorporate by reference the allegations  
 11 contained in the paragraphs above, as if fully set forth herein.

12 64. Defendants engaged in unlawful activity prohibited by the UCL. The  
 13 actions of Defendants as alleged within this Complaint constitute unlawful and  
 14 unfair business practices with the meaning of the UCL.

15 65. Defendants have conducted the following unlawful activities:

16 (a) Violations of the CCPA, Civil Code § 1798.100(b)  
 17 (Defendant Clearview); and

18 (b) Violations of Commercial Misappropriation, Cal. Civ. Code  
 19 § 3344(a) (all Defendants).

20 66. The statutory requirements for Commercial Misappropriation under  
 21 Cal. Civ. Code § 3344, including how Defendants violated that law, are set forth  
 22 in detail in Count II herein below.

23 67. With respect to Clearview's violation of the CCPA, a "business that  
 24 collects a consumer's personal information shall, at or before the point of  
 25 collection, inform consumers as to the categories of personal information to be  
 26 collected and the purposes for which the categories of personal information shall  
 27 be used." Cal. Civ. Code § 1798.100(b). "A business shall not collect additional  
 28 categories of personal information or use personal information collected for



1 additional purposes without providing the consumer with notice consistent with  
2 this section.” *Id.*

3 68. The CCPA defines “personal information” as any “information that  
4 identifies, relates to, describes, is reasonably capable of being associated with, or  
5 could reasonable be linked, directly or indirectly, with a particular consumer or  
6 household.” Cal. Civ. Code § 1798.140(o)(1). Personal information includes, but  
7 is not limited to, “[b]iometric information.” Cal. Civ. Code § 1798.140(o)(1)(E).  
8 “Biometric information” means an individual’s physiological, biological, or  
9 behavioral characteristics, including an individual’s deoxyribonucleic acid  
10 (DNA), that can be used, singly or in combination with each other or with other  
11 identifying data, to establish individual identity.” Cal. Civ. Code § 1798.140(b).  
12 “Biometric information includes, but is not limited to, imagery of the iris, retina,  
13 fingerprint, *face*, hand, [etc.] ... from which an identifier template, such as a  
14 faceprint ... can be extracted ....” *Id.* (emphasis added).

15 69. As set forth in detail elsewhere in this Complaint, Clearview collected  
16 Plaintiff Burke’s and the CCPA Class’s “personal information” as defined in the  
17 CCPA and failed to inform Plaintiff Burke and the CCPA Class of the same at or  
18 before the point of collection. Accordingly, Clearview violated the CCPA.  
19 Clearview also engaged in Commercial Misappropriation as detailed in Count II  
20 herein below.

21 70. In addition to constituting “unlawful conduct” in violation of the  
22 above-noted laws, Clearview’s activities also constitute unfair practices in  
23 violation of the UCL because Clearview’s practices violate an established public  
24 policy, and/or the practice is immoral, unethical, oppressive, unscrupulous, and  
25 substantially injurious to Plaintiff Burke, the CCPA Class, and the Commercial  
26 Misappropriation Class.

27 71. Because of Defendants’ violations of the identified laws, Plaintiff  
28 Burke, the CCPA Class, and the Commercial Misappropriation Class have

1 suffered injury-in-fact and have lost money or property. Plaintiff Burke, the CCPA  
2 Class, and the Commercial Misappropriation Class are entitled to restitution,  
3 restitutionary disgorgement, an injunction, declaratory, and other equitable relief  
4 against such unlawful practices to prevent future harm for which there is no  
5 adequate remedy at law.

6 72. As a direct and proximate result of the unfair business practices of  
7 Defendants, Plaintiff Burke, the CCPA Class, and the Commercial  
8 Misappropriation Class are entitled to equitable and injunctive relief, including  
9 restitutionary disgorgement of the value of Plaintiff Burke's, the CCPA Class's,  
10 and the Commercial Misappropriation Class's California Biometric Information  
11 and Photographs and/or likeness which have been unlawfully misappropriated by  
12 Clearview. Defendants should be enjoined and cease and desist from engaging in  
13 the practices described herein for the maximum time permitted pursuant to Bus. &  
14 Prof. Code § 17208, including any tolling.

15 73. The unlawful and unfair conduct alleged herein is continuing, and  
16 there is no indication that Defendants will refrain from such activity in the future.  
17 Plaintiffs believe and allege that if Defendants are not enjoined from the conduct  
18 set forth in this Complaint, they will continue to violate California and Illinois  
19 laws. Plaintiffs further request that the court issue a preliminary and permanent  
20 injunction.

21 74. Plaintiffs are also entitled to and hereby claim attorneys' fees and  
22 costs, pursuant to the private attorney general theory doctrine (Code of Civil  
23 Procedure § 1021.5), and any other applicable provision for attorney fees and  
24 costs, based upon the violation of the underlying public policies.

**COUNT II**  
**Commercial Misappropriation**  
**In Violation of California Cal. Civ. Code § 3344(a)**  
**(On Behalf of Plaintiff Burke and The Commercial Misappropriation Class**  
**against All Defendants)**

75. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the paragraphs above, as if fully set forth herein.

76. Pursuant to California Civil Code § 3344(a) it is unlawful for any person to knowingly use “another’s name, voice, signature, photograph, or likeness, in any manner ... without such person’s prior consent ....”

77. Any person who violates this section shall be liable to the injured party or parties “in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages.” Cal. Civ. Code § 3344(a); *See Orthopedic Systems, Inc. v. Schlein*, 202 Cal. App. 4th 529, 547 (2001) (“We hold that under section 3344(a), an injured party may recover either the amount of damages specified in the statute or actual damages, whichever is greater, as well as profits from the unauthorized use.”).

78. Plaintiff Burke and the Commercial Misappropriation Class had Photographs (as defined in Cal. Civ. Code § 3344(b)) posted to various websites on the internet, including on Facebook, Twitter, Google, Instagram, Venmo, and YouTube, under the terms and conditions governing those sites.

79. Without providing notice to, and/or obtaining consent from, Plaintiff Burke and the Commercial Misappropriation Class, Defendants knowingly and illicitly obtained Photographs of Plaintiff Burke and the Commercial Misappropriation Class by scraping the internet in violation of many of the websites’ policies which prohibited such conduct. Without notice to, and/or consent from, Plaintiff Burke and the Misappropriation Class, Defendants

1 knowingly used their Photographs and likeness to its advantage by selling access  
2 to them to third-party entities for a commercial gain.

3 80. The use of Plaintiff Burke's and the Commercial Misappropriation  
4 Class's Photographs and likeness by Defendants did not have any connection with  
5 any news, public affairs, sports broadcast or account, or any political campaign.

6 81. "Shareholders, officers, and directors of corporations" may be "held  
7 personally liable for intentional torts when they knew or had reason to know about  
8 but failed to put a stop to tortious conduct." *Asahi Kasei Pharma Corp. v. Actelion*  
9 *Ltd.*, 222 Cal. App. 4th 945, 966 (2013). In addition, all persons "who are shown  
10 to have participated in an intentional tort are liable for the full amount of the  
11 damages suffered." *Id.* Defendants Hon-That and Schwartz knew of, consented to,  
12 directed, and/or authorized the tortious conduct and failed to put a stop to it.

13 82. As a direct and proximate result of Defendants' conduct, Plaintiff  
14 Burke and the Commercial Misappropriation Class have been harmed in an  
15 amount to be proven at the time of trial.

16 83. Plaintiff Burke and the Commercial Misappropriation Class are also  
17 entitled to claim recovery of costs and reasonable attorneys' fees pursuant to Cal.  
18 Civ. Code § 3344(a).

### 19 **COUNT III**

#### 20 **Unjust Enrichment / Restitution**

#### 21 **(On Behalf of Plaintiff Burke and The Unjust Enrichment Class against 22 Defendant Clearview)**

23 84. Plaintiffs hereby reallege and incorporate by reference the allegations  
24 contained in the paragraphs above, as if fully set forth herein.

25 85. Clearview was unjustly enriched by its unlawful misappropriation of  
26 Plaintiff Burke's and the Unjust Enrichment Class's California Biometric  
27 Information, Photographs, and likeness. Through its unlawful conduct, Clearview  
28 received and retained a benefit it otherwise would not have achieved. By depriving  
Plaintiff Burke and the Unjust Enrichment Class of control over their valuable

1 Biometric Information, Clearview took control of and misappropriated the value  
 2 of their California Biometric Information. Clearview's conduct also exposed  
 3 Plaintiff Burke and the Unjust Enrichment Class to a heightened risk of an invasion  
 4 of their privacy.

5 86. There is not another adequate remedy at law. It would be unjust and  
 6 unfair for Clearview to retain any of the benefits obtained from its unlawful  
 7 misappropriation of Plaintiff Burke's and the Unjust Enrichment Class's  
 8 California Biometric Information.

9 87. Clearview should be ordered to disgorge the proceeds that it unjustly  
 10 received from the misappropriation of Plaintiff Burke's and the Unjust Enrichment  
 11 Class's California Biometric Information.

12 **COUNT IV**  
 13 **Violation of the BIPA**  
 14 **740 ILCS §14/1, *et seq.***

15 **(On Behalf of Plaintiff Pomerene and The BIPA Class against all**  
 16 **Defendants)**

17 88. Plaintiffs hereby reallege and incorporate by reference the allegations  
 18 contained in the paragraphs above, as if fully set forth herein.

19 89. Clearview violated the following sections of the BIPA:

- 20 (a) 740 ILCS 14/15(a);
- 21 (b) 740 ILCS 14/15(b);
- 22 (c) 740 ILCS 14/15(c); and
- 23 (d) 740 ILCS 14/15(d).

24 90. Section 15(a) of the BIPA requires that any "private entity in  
 25 possession of biometric identifiers or biometric information must develop a written  
 26 policy, made available to the public, establishing a retention schedule and  
 27 guidelines for permanently destroying biometric identifiers and biometric  
 28 information when the initial purpose for collecting or obtaining such identifiers or

1 information has been satisfied or within 3 years of the individual's last interaction  
2 with the private entity, whichever occurs first." 740 ILCS 14/15(a).

3 91. Section 15(b) of the BIPA makes it unlawful for any private entity to,  
4 among other things, "collect, capture, purchase, receive through trade, or  
5 otherwise obtain a person's or a customer's biometric identifier or biometric  
6 information, unless it first: (1) informs the subject . . . in writing that a biometric  
7 identifier or biometric information is being collected or stored; (2) informs the  
8 subject . . . in writing of the specific purpose and length of term for which a  
9 biometric identifier or biometric information is being collected, stored, and used;  
10 and (3) receives a written release executed by the subject of the biometric identifier  
11 or biometric information ...." 740 ILCS 14/15(b).

12 92. Section 15(c) of the BIPA makes it unlawful for any private entity to,  
13 among other things, "sell, lease, trade, or otherwise profit from a person's or a  
14 customer's biometric identifier or biometric information." 740 ILCS 14/15(c).

15 93. Section 15(d) of the BIPA makes it unlawful for any private entity to,  
16 among other things, "disclose, redisclose, or otherwise disseminate a person's or  
17 a customer's biometric identifier or biometric information unless: (1) the subject  
18 of the biometric identifier or biometric information ... consents to the disclosure  
19 or redisclosure; (2) the disclosure or redisclosure completes a financial transaction  
20 requested by the subject of the biometric identifier or the biometric information  
21 ...; (3) the disclosure or redisclosure is required by State or federal law or  
22 municipal ordinance; or (4) the disclosure is required pursuant to a valid warrant  
23 or subpoena issued by a court of competent jurisdiction." 740 ILCS 14/15(d).

24 94. Clearview violated Sections 15(a)-(d) of the BIPA. Preliminarily,  
25 Clearview is a Delaware corporation and thus qualifies as a "private entity" under  
26 the BIPA. 740 ILCS 14/10. Defendants Ton-That and Schwartz are "individuals"  
27 and, thus, are each a "private entity" under the BIPA. *Id.*  
28

1           95. Plaintiffs' and The Class's Faceprints are "biometric identifiers" and  
2 "biometric information" pursuant to 740 ILCS 14/10.

3           96. During the relevant period, Clearview did not make available to the  
4 public a written policy establishing a retention schedule and guidelines for  
5 permanently destroying Plaintiff Pomerene's and the BIPA Class's biometric  
6 identifiers and biometric information as specified by the BIPA. 740 ILCS 14/15(a).  
7 Thus, Clearview violated Section 15(a) of the BIPA.

8           97. Clearview systematically and automatically collected, captured,  
9 purchased, received, and/or otherwise obtained the BIPA Class's biometric  
10 identifiers and/or biometric information without first obtaining the specific written  
11 release required by 740 ILCS 14/15(b)(3). Likewise, Clearview did not properly  
12 inform Plaintiff Pomerene or the BIPA Class in writing that their biometric  
13 identifiers and/or biometric information were being collected, captured,  
14 purchased, received, and/or otherwise obtained, nor did it inform them in writing  
15 of the specific purpose and length of term for which their biometric identifiers  
16 and/or biometric information were being collected, captured, purchased, received,  
17 and/or otherwise obtained as required by 740 ILCS 14/15(b)(1)-(2). Thus,  
18 Clearview violated Section 15(b) of the BIPA.

19           98. Clearview knowingly sold, leased, traded, and/or otherwise profited  
20 from Plaintiff Pomerene's and the BIPA Class's biometric identifiers and/or  
21 biometric information. Thus, Clearview violated Section 15(c) of the BIPA.

22           99. Clearview also disclosed, redisclosed, and/or otherwise disseminated  
23 Plaintiff Pomerene's and the BIPA Class's biometric identifiers and/or biometric  
24 information without obtaining the consent from Plaintiff Pomerene and the BIPA  
25 Class and/or their authorized representatives. The disclosure, redisclosure, and/or  
26 dissemination by Clearview of Plaintiff Pomerene's and the BIPA Class's  
27 biometric identifiers and/or biometric information was not to complete a financial  
28 transaction requested or authorized by Plaintiff Pomerene or members of the BIPA



1 Class, nor was the disclosure and/or redisclosure required by State or federal law,  
 2 municipal ordinance, or required pursuant to a valid warrant or subpoena issued  
 3 by a court of competent jurisdiction. Thus, Clearview violated Section 15(d) of the  
 4 BIPA.

5 100. Defendants Ton-That and Schwartz conspired with Clearview and the  
 6 Co-Conspirators to carry out the unlawful scheme set forth above. They each had  
 7 direct knowledge of the scheme, and consented, participated, directed, and  
 8 otherwise assisted in carrying out the unlawful scheme. Based on information and  
 9 belief, Defendants are continuing to direct and carry out the unlawful scheme.

10 101. Plaintiff Pomerene and the BIPA Class have been directly harmed by  
 11 Clearview's violations of Sections 15(a)-(d) of the BIPA. They have been deprived  
 12 of their control over their valuable information, and otherwise suffered monetary  
 13 and non-monetary losses. By depriving Plaintiff Pomerene and the BIPA Class of  
 14 control over their valuable information, Clearview misappropriated the value of  
 15 their biometric identifiers and/or biometric information. Based on information and  
 16 belief, Clearview has profited from its unlawful conduct.

17 102. On behalf of Plaintiff Pomerene and the BIPA Class, Plaintiffs seek:  
 18 (i) injunctive and equitable relief as necessary to protect the interests of Plaintiff  
 19 Pomerene and the BIPA Class by requiring Clearview to comply with the BIPA's  
 20 requirements; (ii) statutory damages of \$5,000 per intentional or reckless violation  
 21 of the BIPA pursuant to 740 ILCS 14/20(2) and statutory damages of \$1,000 per  
 22 negligent violation of the BIPA pursuant to 740 ILCS 14/20(1); and (iii)  
 23 reasonable attorneys' fees and costs and other litigation expenses pursuant to 740  
 24 ILCS 14/20(3).

### 25 PRAYER FOR RELIEF

26 103. Wherefore, Plaintiffs, individually and on behalf of The Class,  
 27 respectfully request that this Court enter an Order:  
 28

1           A.     Certifying this case as a class action on behalf of the four sub-  
 2 classes defined above, appointing Plaintiffs as the representatives of the Class, and  
 3 appointing their counsel as Class Counsel;

4           B.     Declaring that Defendants' actions, as set out above, violate the  
 5 BIPA, 740 ILCS 14/1, *et seq.*;

6           C.     Declaring that Clearview's actions, as set out above, violates  
 7 the CCPA, Cal. Civ. Code §1798.100, *et seq.*;

8           D.     Declaring that Defendants' actions, as set out above, violate  
 9 California's commercial misappropriation statute, Cal. Civ. Code § 3344(a);

10          E.     Declaring that Defendants' actions, as set out above, violate  
 11 California's UCL, Bus. & Prof. Code §17200, *et seq.*;

12          F.     Awarding compensatory, non-compensatory, statutory,  
 13 exemplary, and punitive damages;

14          G.     Awarding statutory damages of \$5,000 per intentional or  
 15 reckless violation of the BIPA pursuant to 740 ILCS 14/20(2) and statutory  
 16 damages of \$1,000 per negligent violation of the BIPA pursuant to 740 ILCS  
 17 14/20(1);

18          H.     Awarding either the amount of damages specified in the statute  
 19 or actual damages, whichever is greater, as well as profits from the unauthorized  
 20 use pursuant California's commercial misappropriation statute, Cal. Civ. Code  
 21 § 3344(a);

22          I.     Awarding restitution of all monies, expenses, and costs due to  
 23 Plaintiffs and The Class;

24          J.     Awarding restitutionary disgorgement from the unlawful and  
 25 unfair business practices in violation of Bus. & Prof. Code §§ 17200, *et seq.*;

26          K.     Awarding Plaintiffs and the Class their reasonable attorneys'  
 27 fees, costs and litigation expenses;

28

L. Awarding Plaintiffs and the Class per- and post-judgement interest, to the extent allowable;

M. Awarding injunctive and other equitable relief as necessary to protect the interests of the Class, including, among other things, an order requiring Clearview to comply with the BIPA and CCPA; and

N. Awarding such other and further relief as equity and justice may require.

### **JURY DEMAND**

Plaintiffs, individually, and on behalf of The Class, hereby demand trial by jury on all issues so triable.

Dated: February 27, 2020

HAEGGQUIST & ECK, LLP  
 AMBER L. ECK (177882)  
 ALREEN HAEGGQUIST (221858)  
 AARON M. OLSEN (259923)  
 IAN PIKE (329183)

By: 

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 Facsimile: 619-342-7878  
 aaron@haelaw.com

Counsel for Plaintiffs and the Proposed Class

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

SEAN BURKE and JAMES POMERENE, Individually and on Behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Aaron Olsen, Haeggquist & Eck, LLP  
225 Broadway, Suite 2050, San Diego, CA 92101  
619-342-8000

## DEFENDANTS

CLEARVIEW AI, INC., a Delaware Corporation; HOAN TON-THAT, an Individual; RICHARD SCHWARTZ, and DOES 1 through 10, inclusive  
County of Residence of First Listed Defendant New Castle; New York

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'20CV0370 BAS MSB**

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:  
Violation fo State Privacy Laws

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Sharon Johnson Coleman

DOCKET NUMBER 1:20-CV-00512

DATE

2/27/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE